

Bhurtun Chambers

Monthly newsletter

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Introduction

Litigation before any judicial body or quasi-judicial body, like the Assessment Review Committee, is a very challenging task. Besides analysing the facts and figures, a proper interpretation and application of the law is also crucial. This aspect must be borne in mind particularly in the field of taxation, where there are often complex computations and where no enough attention is paid to applicable law, be it the substantive aspect and even the procedural aspect.

Cases may be won or lost even before delving into the merits. So any person defending a case should raise all technical defences available, for example, an assessment which is time-barred, a tax payer not subject to the income tax system given that he is neither a resident of Mauritius nor having a source of income from Mauritius or an objection which is deemed allowed as it was not dealt with within 4 months.

In other cases, Defendants are able to challenge a representative of a company given that he was not duly appointed by the Board to represent the company, or they are able to establish that the case was entered outside a prescribed statutory delay.

Great care must therefore be exercised before entering a case in order not to jeopardise the rights of litigants right from the beginning.

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Decisions Delivered by the Assessment Review Committee

1. HRS Autoparts Co LTtd v Director-General, Mauritius Revenue Authority ARC/CUS/49-20

This case highlights the status of Rulings delivered by the Respondent.

The Applicant was the importer of biodegradable food boxes and cups, among other items. It previously sought a Ruling from the Respondent regarding the classification of the imported products. For that purpose, the Applicant provided samples of the food boxes and not of the cups. With regard to the cups, only documents were provided.

The Respondent rules that the food boxes and cups could be classified as biodegradable products.

When the goods were imported, the Respondent examined the products and concluded that they were not biodegradable products.

Section 19B(4) of the Customs Act reads as follows:

Subject to subsection (5), a ruling under this section shall be binding on the Director-General.

Section 19B(5)(a) reads as follows:

The ruling under subsection (4) shall not be binding on the Director-General where there is any material difference between the actual facts relating to the goods and the details contained in the application.

The Committee concluded that the Respondent was bound by his Ruling only with regard to the food boxes given that samples were provided together with the application for the Ruling and that the Respondent was in position to carry out any test that he deemed appropriate.

With regard to the cups, the Committee concluded that the Respondent was not bound by his Ruling and that Section 19B(5)(a) of the Customs Act was applicable.

The representations were allowed only with regard to the food boxes.

2. Shamal Travels Ltd v Director-General, Mauritius Revenue Authority ARC/VAT/29-20 & ARC/VAT/51-20

The matter was one where the two representations were lodged 225 days and 471 days outside the statutory period of 28 days respectively.

The reason put forward by the representative of the Applicant was to the effect that all correspondences from the Respondent were being channelled to his accountant who did not take the necessary steps to make the representations. When he found out, he dismissed the accountant.

The representative then went to meet an officer of the Mauritius Revenue Authority.

The Chairperson of the ARC considered that there were just and reasonable cause to allow the representations to proceed.

Selected Decisions delivered by the Supreme Court

1. **Maryven (Mtius) Ltd v. Swan General Ltd 2022 SCJ 119**

In January 2008, a cyclone caused the ship of the Plaintiff to become unseaworthy. It sued the Defendant who was the insurer. A preliminary defence was taken on the ground that action was time barred.

Article 1983-37 of the Code Civil reads as follows:

1983-37. Nonobstant toutes dispositions contraires, toutes actions dérivant d'un contrat d'assurance sont prescrites par cinq ans à compter de l'événement qui y donne naissance.

The case was entered by was of Plaint with Summons on 01 July 2019 and the Supreme Court concluded that the action was time barred. The claim of the Plaintiff was therefore dismissed.

2. **Pere Laval Enterprises Co. Ltd v Mario Antonio Danhoo 2022 SCJ 92**

An appeal was lodged by the Appellant. Same was made outside the statutory period of 21 days.

The Supreme Court referred to the case of **Sookun M. E. & Others v Medine Ltd [2021 SCJ 337]** and the following extracts are pertinent:

...although the time limit prescribed for the formalities under Section 5(1) is couched in mandatory terms and is meant to be strictly adhered to, failure to comply with same would not always be invariably fatal. There may be **exceptional circumstances** where the court may take into consideration all the circumstances including the purpose and importance of the requirement, the nature of the breach and the conduct of the parties as well as the consequences or prejudice that will result from the non-fulfilment of the time limit in order to decide whether to exercise its discretion to accede favourably to an extension of the time limit.

The proper procedure however to be followed by the party who purports to invoke the court's discretion to entertain an appeal which has been lodged outside the statutory time limit, is by way of **an ancillary application made by way of a written motion supported by affidavit**, reciting the reasons for the delay. For practical reasons, **such an application has to be made at a preliminary stage well before the hearing** of the appeal on its merits...

In the present matter, the Supreme Court concluded that there was no reasonable cause to allow the appeal lodged outside delay to proceed. The appeal was therefore dismissed.

Important amendment

According to the Revision of Laws Act, the published revised edition of enactments shall be the sole official text of the enactment included in it.

The Revision of Laws Act was amended by the Revision of Laws (Amendment) Act 2022 (Act No. 2 of 2022) to provide for an electronic revised edition. To that effect, the amending Act provides that the new section 4B(3) of the Revision of Laws Act will read as follows:

(3) Notwithstanding sections 12(1) and 13 of the Interpretation and General Clauses Act, the enactments included in the electronic revised edition shall, for all purposes, with effect from the date on which they are published on the web portal of the Attorney-General's Office –

- (a) be regarded as equivalent to the enactments included in a revised edition and shall be deemed to be the official text of the enactments so published; and
- (b) be taken to be the laws of Mauritius.

It is to be noted that section 4(5) of the Revision of Laws Act will not apply to the electronic edition, such that the electronic version will not be the sole official enactment. The hard copy version will remain the sole official version.

The above amendments are not yet in force and will become applicable law when Proclaimed subsequently.

Our Trainings

Bhurtun Tax Training Institution has conducted an online training on **Value Added Tax for Beginners** to a group of professionals involved in the accounting sphere. The training took place on 09, 16 and 23 March 2022.

A short online training was also conducted on 06 April 2022 on **How to deal with objections lapsed for non-payment of 10% or for other reasons provided by law.**

The following Trainings are also open for registration:

Basics of International Taxation 07, 14, 21 and 28 May 2022

(MQA approved)

09h00 to 12h00

Venue: Le Labourdonnais Hotel

Face to Face Training

Some main differences between the 11 May 2022

OECD and the UN Model Tax

10h00 to 12h00

Conventions

(MQA approved)

online

An analysis of the 80percent exemption under the Income Tax Act

20 April 2022
10h00 to 11h30
(fully booked)

(Free webinar)

25 May 2022
10h00 to 11h30

All relevant details may be obtained by sending an email to bhurtuntaxtraining@gmail.com or by visiting the Facebook page “Bhurtun Tax Training Institution”.

TAILOR-MADE TRAININGS FOR EMPLOYERS

Our training institution also provides trainings as per specific requirements of employers for the benefit of their employees. Such trainings are delivered within the premises of the employers. Some examples of such trainings are as set below, but of course, employers may request for specific trainings depending on the needs of their staff:

1. Mastering International Taxation
2. Mastering the Taxation of the Global Sector
3. The operation of the VAT system
4. Mastering the Income Tax System
5. The Taxation of Trusts and Foundations
6. The Conduct of Cases before the Assessment Review Committee
7. The Rules of Statutory Interpretation

Our Training Institution is approved by the MQA so that employers are eligible for appropriate refunds by the HRDC.

To that end, a three half-day training on **Mastering Taxation - Global Business Sector & Others** was organised for the employees of Adansonia Management Services Ltd on 13, 14 and 15 April 2022. Here are a few pictures of the training sessions:



Ahmed Richard Bhurtun

Barrister and Founder of Bhurtun Chambers

Email: ahmedbhurtun@gmail.com

Phone: +230 59045181